

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

In re: MI Windows and Doors, Inc.
Products Liability Litigation

This Document Relates To: All Cases

MDL Docket No. 2333

C/A No. 2:12-MN-00001-DCN

OBJECTION TO PROPOSED PRETRIAL CONFERENCE AGENDA

Plaintiff, Lakes of Summerville, LLC, hereby files this objection to the Proposed Pre-Trial Conference Agenda filed on June 7, 2012 in MDL No. 2333 (2:12-MN-00001-DCN) by Counsel for the Plaintiff in *Nadine Johnson, et al. v. M.I. Windows and Doors, Inc.*, Case No. 2:11-cv-00167-DCN.

PROCEDURAL BACKGROUND

Lakes of Summerville, LLC v. M.I. Windows and Doors, Inc., Case No. 2:12-CV-01297 was filed with this Court on May 17, 2012. It alleges a proposed class action related to a class of individuals and entities who purchased windows manufactured by the Defendant M.I. Windows and Doors, Inc. (“Defendant”) for the purpose of incorporating them into improvements to real property (the “Purchaser Class Action”). Though the alleged claims and damages are similar, the other pending actions before this Court allege proposed Class Actions and/or individual actions on behalf of Homeowners that allegedly purchased improvements to real property that contained windows manufactured by the Defendant (the “Homeowner Actions”).

The Purchaser Class Action was filed in this Court subsequent to the transfer of certain Homeowner Actions to this Court pursuant to 28 U.S.C. 1407 and the Order of the Panel on Multidistrict Litigation filed April 23, 2012 (“MDL Order”) for the purposes of

coordinated and consolidated pretrial matters. Therefore, pursuant to Rule 7.2, Rules for Multidistrict Litigation, this action was filed in the Transferee Court and no action is required of the Panel on Multidistrict Litigation. The Purchaser Class Action has already been recognized as a related action in this MDL.

OBJECTION

On June 7, 2012, Counsel for the Plaintiff in *Nadine Johnson, et al. v. M.I. Windows and Doors, Inc.*, Case No. 2:11-cv-00167-DCN, one of the actions transferred to this Court pursuant to the MDL Order, filed a Proposed Pretrial Conference Agenda.

The Purchaser Class Action Plaintiffs first received the Proposed Pretrial Conference Agenda when it was filed on June 7, 2012. Contrary to the assertions of Counsel for Ms. Johnson, the Purchaser Class Action Plaintiffs were not consulted on the Proposed Agenda. The Purchaser Class Action Plaintiffs submit that the following matters are premature for discussion at the initial pretrial conference due to the fact that Plaintiffs cannot discuss such substantive matters until the Court grants the authority for Counsel to do so by appointing a Plaintiffs' Steering Committee and Lead Counsel. Accordingly, the Purchaser Class Action Plaintiffs object to the following portions of the Proposed Agenda:

A. Section IV. The Purchaser Class Action Plaintiffs object to Counsel for Nadine Johnson representing to the Court that *Nadine Johnson, et al. v. M.I. Windows and Doors, Inc.* is the "Lead Case." The purpose of the MDL is to ensure both "just" and "efficient" completion of pre-trial matters in those actions that comprise the MDL. *See* 28 U.S.C. § 1407(a) (stating that multidistrict litigation, which coordinates or consolidates pretrial proceedings in civil actions sharing common questions of fact, can promote the

“just and efficient” conduct of such actions). The *Johnson* case has not moved forward significantly in over a year. Contrary to the assertion that *Johnson* should be the Lead Case, it should participate in the MDL process along with the other cases in an effort to actually move these cases toward resolution.

B. Section VI. Discovery Orders.

C. Section VIII. Protocol for Testing and Preservation of Evidence

D. Section IX. Deposition and Discovery Protocols

E. Section X. Status of Directive in Case Management Order #1. There is no Case Management Order #1. However, Counsel for the Purchaser Class Action Plaintiffs will circulate a draft Proposed Case Management Order to all Counsel of Record for transferred and related cases in an attempt to facilitate discussion, coordination, and the filing of a Joint Proposed Case Management Order for this Court’s consideration.

F. XI. Class Certification

G. XIII. Other Matters

Finally, it appears there is confusion concerning the status of *Lakes of Summerville, LLC v. M.I. Windows and Doors, Inc.*, Case No. 2:12-CV-01297. Contrary to the assertions of M.I. Windows, this matter is not a third party action. It is a class action filed within this MDL by Lakes of Summerville, LLC on behalf of a class of purchasers. Counsel for Lakes of Summerville in Case No. 2:12-cv-01297 requested that Defendant M.I. Windows waive service, which it agreed to do. However Counsel in this case did not suggest that this case proceed outside of the MDL. Indeed, Counsel in Case No. 2:12-cv.-01297 direct filed this case in this Court as a “related action” within the MDL. At this time, Counsel in this case have not made any suggestions to defense

counsel regarding discovery proceedings or the sharing of discovery. Further, Defendant states that it will file a notice of related action with the JPML regarding this case. However, as mentioned previously herein, there is no action for the JPML to take. *Lakes of Summerville, LLC v. M.I. Windows and Doors, Inc.*, Case No. 2:12-CV-01297 cannot be transferred to this Court because it is already properly before this Court.

Counsel for the Purchaser Class Action Plaintiffs looks forward to working with all of the parties within this MDL and the Court in coordinated effort to resolve these claims.

Respectfully submitted,

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Dated: June 12, 2012

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